

## **Article 11 Administration, Procedures and Enforcement**

**Draft – August 8, 2005**

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**11-1 Administration****11-1.1 Zoning Administrator.**

The provisions of this Ordinance shall be enforced by the designated agent of the Town of Warrenton, who shall be known as the Zoning Administrator. The Zoning Administrator shall have all necessary authority on behalf of the Town Council to administer and enforce the Zoning Ordinance. His authority shall include:

1. ordering in writing the remedying of any condition found in violation of this Ordinance;
2. insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311 of the Code of Virginia and Article 11 of this Ordinance; and
3. in specific cases, making findings of fact and, with concurrence of the Town attorney, conclusions of law regarding determinations of rights accruing under § 15.2-2307 of the Code of Virginia.
4. granting a variance from any building setback requirement contained in the Zoning Ordinance in accord with Article 11 of this Ordinance and § 15.2-2286 of the Code of Virginia.
5. The Zoning Administrator shall respond within ninety days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.
6. In addition to the regulations and requirements herein contained concerning the administration of this Ordinance, the Zoning Administrator may establish reasonable additional administrative forms and procedures deemed necessary for the proper administration of this Ordinance.
7. Such other powers as may be granted in the Code of Virginia.

**11-1.2 Certified Copy.**

A certified copy of the Zoning Ordinance, as adopted and including any amendments, shall be filed in the office of the Zoning Administrator of Warrenton and in the office of the Clerk of the Circuit Court of Fauquier County, Virginia.

**11-1.3 Processing Fees.**

It is the intent of the Town that at least part of the cost of administering this Ordinance be borne by those responsible for development; therefore, a fee schedule, as prescribed by the Town Council and modified from time to time, shall apply to all permits, reviews, and processing as required by this Ordinance.

**11-1.4 Payment of Delinquent Taxes Prior to Filing a Land Use Application.** Prior to the filing of an application for a special use permit, special exception, variance, rezoning, site plan, subdivision plat, land disturbance permit, or other land use permit, the applicant shall produce evidence that any delinquent Town real estate taxes properly assessed against the subject property have been paid in full, in accord with § 15.2-2286 (E) of the Code of Virginia, as amended. ~~(Amended by Council 5-13-97)~~

**11-2 Board of Zoning Appeals****11-2.1 General Provisions (Purpose, Authority and Membership)**

- 11-2.1.1 The Board of Zoning Appeals shall hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of the Zoning Ordinance.
- 11-2.1.2 The Board of Zoning Appeals shall adopt such rules and regulations as it may consider necessary to carry out its authorized business.
- 11-2.1.3 The Board shall consist of five (5) members and shall be appointed by the Circuit Court of Fauquier County. Members shall be residents of the Town of Warrenton. The Board shall receive compensation for traveling expenses and may receive other such compensation as may be authorized by the Town Council. Appointments to fill vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.
- 11-2.1.4 The term of office shall be for five (5) years. One of the five (5) appointed members may be an active member of the Planning Commission.
- 11-2.1.5 Any member of the Board may be removed, for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the Circuit Court, after a hearing held after at least fifteen (15) days written notice.
- 11-2.1.6 Any member of the Board shall be disqualified to act upon a matter before the Board with respect to property in which the member has an interest.
- 11-2.1.7 The Board shall choose annually its own chairman and vice-chairman who shall act in the absence of the chairman.

- 11-2.1.8 The Town Manager shall appoint a staff member to serve as secretary to the Board of Zoning Appeals, without vote and shall prepare minutes of meetings, keep all records and conduct official correspondence of the Board. In the absence of the secretary at any meeting, the Board shall appoint some other person, who may or may not be a member of the Board, to prepare the minutes thereof.

### **11-2.2 Rules and Regulations**

- 11-2.2.1 The meeting of the Board shall be held at the call of its chairman or, in his absence, the acting chairman, or at such times as a quorum of the Board may determine.
- 11-2.2.2 The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses.
- 11-2.2.3 The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.
- 11-2.2.4 All meetings of the Board shall be open to the public. A favorable vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official or to decide in favor of the applicant on any matter upon which the Board is required to pass.
- 11-2.2.5 For the conduct of any hearing and the taking of any action or transaction of official business, a quorum shall be required of not less than three (3) members of the Board.
- 11-2.2.6 In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from. The concurring vote of three (3) members shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the Ordinance or to effect any proceedings and other official actions, which shall be filed in the office of the Board and shall be public records.

### **11-2.3 Powers and Duties.**

The Board of Zoning Appeals shall have the following powers and duties:

- 11-2.3.1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this Ordinance or of any ordinance adopted pursuant thereto, in accord with Section 11-3.13 of this Ordinance, including decisions of the Zoning Administrator. The

decision on such appeals shall be based on the Board's judgment of whether the administrative officer was correct. The Board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision. In the case of interpreting the zoning map, the board shall interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The Board shall not have the power to change the locations of district boundaries as established by Ordinance.

11-2.3.2. To authorize upon appeal or original application in specific cases a variance as defined in § 15.2-2201 of the Code of Virginia, from the terms of this Ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this ordinance shall be observed and substantial justice done and the requirements in Section 11-3.12.

11-2.3.3. No provision of this section shall be construed as granting any Board the power to rezone property or to base Board decisions on the merits of the purpose and intent of any ordinances duly adopted by the Town Council.

11-2.3.4. To hear and decide applications for special exceptions or special use permits as may be authorized by this Ordinance as provided in Section 11-3.11 and Article 3. The Board may impose such conditions relating to the use for which a Special Exception or Special Use Permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. No special exception or Special Use Permit may be granted except after notice and hearing as provided by § 15.2-2204 of the Code of Virginia.

To revoke a Special Exception or Special Use Permit previously granted by the Board of Zoning Appeals if the Board determines that there has not been compliance with the terms or conditions of the permit. No Special Exception or Special Use Permit may be revoked except after notice and hearing as provided by § 15.2-2204 of the Code of Virginia.

11-2.3.6. When giving any required notice to owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.

11-2.3.7. Records

The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. It shall keep full records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record.

11-2.3.8. Periodic Reports

The Board shall submit a report of its activities to the Town Council at least once each year.

11-2.3.9. Limitation

All provisions of this Ordinance relating to the Board shall be strictly construed. The Board, as a body of limited jurisdiction, shall act in full conformity with all provisions and definitions in this Ordinance and in strict compliance with all limitations contained therein.

11-2.3.10. Decisions Subject to Judicial Review

In accord with § 15.2-2314 of the Code of Virginia, as amended, all decisions and findings of the Board shall be final decisions, and shall be subject to judicial review in the following manner:

1. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board or bureau of the Town, may present to the Circuit Court of Fauquier County a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board of Zoning Appeals.
2. Upon the presentation of such petition, the court shall allow a Writ of Certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board of Zoning Appeals and on due cause shown, grant a restraining order.
3. The Board of Zoning Appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
4. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with the commissioner's findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which a determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
5. Costs shall not be allowed against the Board of Zoning Appeals, unless it shall appear to the court that the Board acted in bad faith or with malice in making the decision appealed from. In the event the decision of the Board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the Writ of Certiorari.

### **11-3 Procedures for Application Review and Approval**

#### **11-3.1 Types of Permit Applications**

This Ordinance provides for the following types of permit applications for land use and development:

1. Land Disturbance Permit, subject to review and approval by the Zoning Administrator.
2. Zoning Permit, subject to review and approval by the Zoning Administrator.
3. Building Permit, subject to review and approval by the building official.
4. Occupancy Permit, subject to review and approval by the Zoning Administrator.
5. Site Development Plan approval, in accord with the Subdivision and Development Ordinance of the Town of Warrenton and subject to review and approval by the Zoning Administrator.
6. Subdivision Plat approval, in accord with the Subdivision and Development Ordinance of the Town of Warrenton and subject to review and approval by the Zoning Administrator.
7. Commission Permit ("2232 Review"), subject to public review and approval by the Planning Commission.
8. Zoning Amendment (including Conditional Zoning Procedures), subject to review and approval by the Town Council.
9. Special Use Permit, subject to review and approval by the Town Council.
10. Variances, subject to review and approval by the Board of Zoning Appeals, and for certain cases as provided for herein, subject to review and approval by the Zoning Administrator.
11. Appeals, subject to review and approval by the Board of Zoning Appeals.
12. Additional Governmental Approvals. All departments, officials and public employees of the Town vested with the duty or authority to issue permits or licenses shall conform to the provisions of this chapter. They shall issue permits or licenses for uses, buildings or purposes only when they are in conformance with the provisions of this Ordinance. Any such permit or license, if issued in conflict with the provisions of this Ordinance, shall be null and void.

**11-3.2 Public Hearing Procedures****11-3.2.1 Advertisement and Notice is Required.**

Prior to each public hearing involving planning and zoning matters before the Planning Commission, the Town Council or the Board of Zoning Appeals, the Town shall provide advertisement and written notice as may be required by §§ 15.2-2204 and 15.2-2285 of the Code of Virginia, as amended.

**11-3.2.2 Notice by Town.**

Notwithstanding any other provisions of this section, whenever the notices required under this Section are sent on behalf of an agency, department or division of the Town, such notice shall be sent by the Zoning Administrator and may be sent by first class mail; however, the Zoning Administrator shall make affidavit that such mailings have been made and file such affidavit with the papers in the pertinent application or case.

**11-3.2.3 Notice and Certification by Applicant.**

For any application for amendment or development approval for which a public hearing is required before the Planning Commission and the Council and which is initiated by an applicant, the applicant shall be responsible for providing notice in accord with § 15.2-2204 of the Code of Virginia. A certification of notice and a listing of the persons to whom notice has been sent shall be filed with the Zoning Administrator by the applicant at least five days prior to the first public hearing of the Commission. A counterpart of such affidavit shall be presented to the Planning Commission or the Council at the beginning of its public hearing. The applicant may rely upon records of the local real estate assessor's office to ascertain the names of persons entitled to notice.

**11-3.2.4 Condominium Ownership.**

In the case of a condominium, written notice may be sent to the unit owner's association instead of to each individual unit owner.

**11-3.2.5 Additional Notice Required for Deferrals**

If an item is not heard at a public hearing for which it was noticed, but is deferred to a specific date, no additional notice at a public hearing is required by this Section.:

**11-3.2.6 Additional Notice Required for Recessed Public Hearings.**

If a public hearing is begun but the agenda not completed, thereby requiring the meeting to be recessed, no additional notice is required as long as the dates for completion of the public hearing agenda is announced at the hearing which has been recessed.



**11-3.2.7 Speakers at Public Hearings.**

All witnesses and speakers presenting facts, evidence or opinion at any public hearing shall provide their name, address and affiliation, if any, for the record. Witnesses or speakers may be required to give oath or affirmation regarding the truth of their statements. At the discretion of the person presiding over the hearing, speakers may be limited as to the time they are allowed to speak.

**11-3.3 Land Disturbance Permit****11-3.3.1 Permit Required.** *[moved from Article 4]*

No person shall engage in any kind of land disturbing activity, as defined in Article 11, within the Town of Warrenton until they have acquired a Land Disturbance Permit.

Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of the required erosion and sediment control plan and receipt of a land disturbance permit shall be the responsibility of the owner of the land.

**11-3.3.2 Plan Submission.** *[moved from Article 4]*

If filed separately from a site development plan, three (3) copies of the erosion and sediment control plan shall be submitted to the Administrator. Is submitted with the site development plan, the erosion and sediment control plan shall accompany each copy of the site plan submission.

**11-3.3.3 Approved Plan.** *[moved from Article 4]*

An approved plan is required before the issuing of any other building or development permits.

**11-3.3.4 Plan, Action.** *[moved from Article 4]*

Any erosion and sedimentation plan submitted under the provisions of this Article and Article 4 will be acted on within forty-five (45) days from receipt by either approving or disapproving in writing and, if disapproved, giving specific reasons for such disapproval. If no formal action has been taken by the plan approving authority within forty-five (45) days after receipt of a plan, the plan shall be deemed approved.

**11-3.3.5 Plan Amendments.** *[moved from Article 4]*

An approved plan may be changed by the plan approving authority in the following cases:

1. where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
2. where the person responsible for carrying out the approved plan finds that because of changed circumstances, or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this Article, are agreed to by the plan approving authority and the person responsible for carrying out the plan.

**11-3.3.6 Bonding.** *[moved from Article 4]*

Prior to the issuance of any permit, the Administrator shall also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the Town Attorney for the Town of Warrenton, to ensure that measures could be taken by the Town, at the applicant's expense, should they fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of them by the approved plan as a result of their land disturbing activity. This cash escrow, letter of credit, or other acceptable legal arrangement will provide for a right-of-entry by representatives of the Town, for purposes of inspection, reinstallation, maintenance, or any conservation practices as may be necessary.

1. If the Town takes such conservation action upon such failure by the permittee, the agency may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.
2. Within sixty (60) days of the achievement of adequate stabilization of the land disturbing activity, the bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.
3. These requirements are in addition to all other provisions of this Article relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

**11-3.3.7 Inspections and Enforcement, Generally.** *[moved from Article 4]*

Inspections shall be performed by the Town's Construction Inspector or Building Official and enforcement shall be performed by the Zoning Administrator.

**11-3.3.8 Monitoring, Reports, and Inspections.** *[moved from Article 4]*

The Construction Inspector or Building Official, through the Administrator shall: (i) provide for periodic inspections of the land disturbing activity, and (ii) may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. The owner, permittee or person responsible for carrying out the plan, or operator shall be given notice of the inspection. If the plan approving authority through the Administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the mail to the plan certification, or by delivery at the site of the land disturbing activity to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed in violation of this Article and upon conviction shall be subject to the penalties provided in Section 11-5 herein.

With respect to approved plans for erosion and sediment control in connection with all regulated land disturbing activities which require a permit, the Administrator may require of the person responsible for carrying out the plan such monitoring and reports, and may make such on-site inspections, after notice to that person, as are deemed necessary to determine whether the soil erosion and sediment control is performed, and whether such measures are effective in controlling soil erosion and sediment resulting from the land disturbing activity. Such person shall have the opportunity to accompany the inspector on any on-site inspection.

After land clearing operations have begun, no area shall be denuded for more than thirty (3) days unless authorized by the Administrator. All trenches for storm, sewer, water, and gas lines are to be backfilled, compacted, seeded, and mulched within seven (7) days of backfill.

**11-3.3.9 Acceptance of Performance.** *[moved from Article 4]*

Upon completion of an approved erosion and sedimentation control plan, the permittee shall notify the Administrator of such completion. The Town Construction Inspector or Building Official shall then inspect the work and plantings, and upon their determination that they are in compliance with the approved plan, they shall notify the Administrator, who shall issue a letter of preliminary acceptance. A condition of any such preliminary acceptance shall be that the applicant or permittee guarantee all erosion and sedimentation control work for a period of one (1) year from the date of its preliminary acceptance, or for a period of one (1) year from repair or replanting ordered by the Administrator, until such time that all control structures and a minimum of ninety (90) percent of all plantings shall have survived for a year without need of further replanting or repair. The Administrator may order in writing such replanting or repair work as shall be deemed necessary to enforce compliance with the approved plan and guarantee at any time during the one (1) year period. Such an order shall serve to revoke the preliminary acceptance and shall cause the applicant to renew the guarantee for an additional one (1) year from the date of replanting or repair. Final acceptance shall occur when preliminary acceptance has remained unrevoked for a period of one (1) year, or when all control structures and a minimum of ninety (90) percent of all plants have survived for a period of one (1) year without need of further replanting or repair. For the purposes of this Article, normal cleaning of silt basins alone shall not be construed to be repair work.

**11-3.3.10 Appeals.** *[moved from Article 4]*

Final decisions of the Administrator under this Article shall be subject to review by the ~~Town Council~~ Board of Zoning Appeals, provided, that an appeal is filed within thirty days from the date of any written decision by the Administrator.

Final decisions of the Administrator or ~~Town Council~~ Board of Zoning Appeals under the Article shall be subject to review by the Fauquier County circuit court, provided, that an appeal is filed within thirty (30) days from the date of the final written decision of ~~Town Council~~ the Board.

**11-3.3.11 Violations; Remedies; Civil Penalties; Notice.** *[moved from Article 4]***1. Stop Work Order.**

Upon receipt of a sworn complaint of a violation of this Article from the representative of the program authority or the Board responsible for ensuring program compliance, the chief administrative officer of the program authority or the Board may, in conjunction with or subsequent to a notice to comply as specified in subsection A above, issue an order requiring that all or part of a

land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A above. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply.

The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the chief administrative officer or his designee may issue an order to the owner requiring that all construction and other work on the site other than corrective measures be stopped until an approved plan or any required permit have been obtained.

Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of an order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Any person violating or failing, neglecting, or refusing to obey an order issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted. ~~(Amended by Town Council, 6/8/99)~~

## **2. Civil Penalties, generally. [moved from Article 4]**

Except as set out immediately herein below, any person who violates this Article may be liable to the Town in a civil action for civil penalties of One Hundred Dollars (\$100.00) for any one violation. Each day during which the

violation is found to have existed shall constitute a separate offense. The total civil penalties for a series of specified violations arising from the same operative set of facts shall not exceed Three Thousand Dollars (\$3,000.00). Notwithstanding the foregoing, the civil penalty for commencement of land-disturbing activities without an approved permit as provided in Section 4-5 of this ordinance shall be One Thousand Dollars (\$1,000.00), except that civil penalties for a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not exceed a total of Ten Thousand Dollars (\$10,000.00).

**3. Injunctions and Other Relief.** *[moved from Article 4]*

Notwithstanding any other relief or remedy available under this Article, the Administrator may apply to the Circuit Court of Fauquier County for injunctive or such other equitable relief as might be appropriate in the case of a violation or threatened violation of any of the provisions of the Article, without the necessity of showing that there does not exist an adequate remedy at law.

**4. Notice of Violation.** *[moved from Article 4]*

In no case shall the Administrator begin legal action to enforce the provisions of this Article unless and until they have first given, or made diligent effort to give, specific notice to the applicant or permittee, as the case may be, of any violation of this Article for which such legal or equitable relief is to be sought. Such notice shall give the applicant or permittee a reasonable opportunity under the particular circumstances to correct the situation before the enforcement action is brought.

**5. Civil Penalties.** *[moved from Article 4]*

Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this Article shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation.

**6. Cumulative Remedies.** *[moved from Article 4]*

The remedies provided for in this Article shall be cumulative in the sense that the imposition of, or attempt to impose, one (1) remedy shall not act as a restriction of any right to impose or attempt to impose, any other remedy authorized by this Article.

**7. Administrative Fines.** *[moved from Article 4]*

With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Administrator, or any condition of a permit or any provision of this Article, the Town Council, or the Administrator may provide, in an order issued by the Town Council or the Administrator against such person, for payment of civil charges for violations in specific sums, not to exceed Two Thousand Dollars (\$2,000) for each violation. Such civil charges shall be instead of any appropriate civil penalties which could be imposed as outlined in Section 11-5.

**11-3.3.12 Criminal Penalties - Misdemeanor.** *[moved from Article 4]*

Violators of this Article shall be guilty of a Class One misdemeanor and subject to a fine not exceeding \$2,500, or twelve months imprisonment in jail, or both, for each violation.

**11-3.4 Zoning Permits****11-3.4.1 Zoning Permit Required**

No permitted principal or accessory building, structure or use, or building, structure or use permissible by special exception, shall be constructed, reconstructed, moved, added to or structurally altered or otherwise allowed without a zoning permit issued by the Zoning Administrator. A zoning permit is required in all cases where a building permit is required.

Failure to obtain a zoning permit shall be a violation of this chapter and punishable under Section 11-5.

The Zoning Administrator shall maintain a record of all zoning permits and a copy shall be furnished, upon request, to any person.

**11-3.4.2 Application for Zoning Permit**

An application for a Zoning Permit shall be made to the Zoning Administrator, who shall require and be furnished by the applicant with all plans and documents as may be determined to be necessary to evaluate whether the proposed structure and facilities will be in compliance with the provisions of this Ordinance.

In order for an application for a zoning permit to be deemed complete, each such application shall be accompanied by the following items, unless waived by the

Zoning Administrator as not pertinent. The Zoning Administrator may also require additional information necessary in order to determine if the application conforms with the provisions of this Ordinance.

1. A statement from the Town Director of Public Works that all applicable regulations and requirements for water and wastewater facilities have been complied with.
2. A complete description of the intended use or uses.
3. If a dwelling, the number of housekeeping units within the structure.
4. A plot plan signed by the applicant drawn to scale showing dimensions of the structure with respect to property lines and public highways; provided, no part of which is to be located less than the required setback distance from any property line or right-of-way of any public highway.
5. Number, size, location and lighting of signs, if any.
6. Off-street parking and other facilities.
7. Proposed utilities and their locations.
8. Drainage design and proposal.
9. Topographic map, if determined to be necessary by the zoning administrator.
10. Fee in accord with the fee schedule adopted by the Town Council.

#### 11-3.4.3. Standards for Issuance

Zoning permits issued on the basis of plans and applications approved by the zoning administrator authorize only the use, arrangement and construction set forth in the approved plans and applications, and no other use, arrangement or construction. Use, arrangement and construction at variance with that authorized shall be deemed a violation of this chapter and punishable as provided under Section 11-5.

No zoning permit shall be issued where it appears that the structure to be constructed or the use contemplated would be in violation of the provisions of this Ordinance or any other applicable law, ordinance or regulation. The issuance of a zoning permit shall not afford protection to any owner who is found to be in violation of this Ordinance or any other applicable law, ordinance



or regulation.

If it appears that the proposed structure and use of land or structure is in conformity with the provisions of this chapter, a zoning permit shall be issued to the applicant by the zoning administrator. If an intended use is found to be in compliance with this Ordinance, before proceeding, the applicant is still required to ensure compliance with the Virginia Uniform Statewide Building Code, and all other applicable laws, ordinances and regulations.

Approval or denial of a zoning permit shall be made within ten (10) working days of the time at which the Zoning Administrator has deemed that the zoning permit application is complete.

#### 11-3.4.4. Duration of Valid Zoning Permit

Any zoning permit issued shall be valid for one year. If an applicant has not completed construction of the building after one year of receiving the permit, the applicant may re-apply.

### 11-3.5 Building Permits

#### 11-3.5.1 Building Permit Required

No principal or accessory building, structure or use shall be constructed, reconstructed, moved, added to or structurally altered or otherwise allowed without a building permit issued by the Building Official.

Failure to obtain a building permit shall be a violation of this chapter and punishable under Section 11-5 of this Ordinance.

The Building Official shall maintain a record of all building permits and a copy shall be furnished, upon request, to any person.

#### 11-3.5.2 Application for Building Permit

An application for a Building Permit shall be made to the Building Official, who shall require and be furnished with all such plans and documents as may be required to determine whether the proposed structure and facilities will be in compliance with the provisions of this ordinance and with the Virginia Statewide Uniform Building Code.

In order for an application for a Building Permit to be deemed complete, each such application shall be accompanied by the following items, unless an item is

deemed not pertinent by the Building Official, and such additional information as the Building Official may require as being necessary in order to determine if the application conforms with the provisions of this Ordinance and the Building Code:

1. The size and shape of the parcel of land on which the proposed building is to be constructed
2. Scale drawings which accurately show the design, construction, dimensions and materials of all proposed buildings and structures
3. The location of such buildings and structures with respect to the property lines of said parcel of land, and the right-of-way of any street or highway adjoining said parcel of land.
4. Proposed utilities and their location.
5. Drainage scheme.
6. Fee in accord with the fee schedule adopted by the Town Council.

#### 11-3.5.3. Standards for Issuance

Building permits issued on the basis of plans and applications approved by the Building Official authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement and construction at variance with that authorized shall be deemed a violation of this chapter and punishable as provided under Section 11-5 of this chapter.

No building permit shall be issued before receipt of a zoning permit for the proposed use and structure. Building and zoning permits for the same use and structure may be submitted, reviewed and approved concurrently.

No building permit shall be issued where it appears that the structure to be constructed or the use contemplated would be in violation of the provisions of this Ordinance or any other applicable law, ordinance or regulation. The issuance of a building permit, however, shall not afford protection to any owner who is found to be in violation of this Ordinance or any other applicable law, ordinance or regulation.

If the proposed structure is in conformity with the provisions of this Ordinance and the Virginia Uniform Statewide Building Code, a building permit shall be issued to the applicant by the Building Official.

Approval or denial of a building permit shall be made within ten (10) working days of the time at which the Building Official has deemed that the application for permit is complete.

11-3.5.4. Duration of Valid Building Permit

Building permits issued shall be valid for one year.

**11-3.6 Occupancy Permit**

11-3.6.1 Occupancy Permit Required.

Land may be used, and buildings occupied, structurally altered, erected, or changed in use for any purpose as permitted in the District in which such land or building is located, only after an occupancy permit has been issued by the Zoning Administrator. Such a permit shall state that the building or the proposed use, or the use of the land, complies with the provisions of this Ordinance. A similar permit shall be issued for the purpose of maintaining, renewing, or changing a nonconforming use. An occupancy permit either for the whole or a part of a building or the use of the land shall be applied for simultaneously with the application for a building permit.

11-3.6.2 Standards for Issuance.

The Occupancy Permit shall be issued within ten (10) days after final approval by the Building Official of the erection or structural alteration of such building or part which has conformed with the provisions of this Ordinance and all previously issued permits and approvals for the site, including building permits, zoning permits and site plans.

No Occupancy Permit shall be granted until all improvements shown on any approved site plan have been completed in accordance therewith.

**11-3.7 Site Development Plan *[formerly Article 27]***

11-3.7.1 Site Development Plan Required

No person shall commence any use or erect any structure, including additions to existing structures, parking areas or other required site plan features, without first obtaining the approval of a site development plan by the zoning administrator as set forth in this article. No use shall be carried on, no structure erected or enlarged, and no other improvement or construction undertaken, except as shown upon an approved site development plan.

A site development plan shall be required for the following uses in the enumerated districts:

- Multi-family dwellings, town houses and all other dwellings except single family detached, two-family and accessory dwellings.
- All uses in the RO, PSP, CBD, LI and C Districts
- For all special use permits

11-3.7.2 Exemptions from Site Development Plan Requirement

The following are exempt from having to file a site plan: the lawful construction, alteration and occupancy of a single or two-family dwelling or accessory unit, with or without a garage. Exemption from the site plan requirements does not authorize violation of any other provision of this Ordinance.

11-3.7.3. Site Development Plan Requirements

Every site plan shall be submitted to the zoning administrator in accordance with the applicable standards and regulations for Site Development Plans as provided in the Town of Warrenton Subdivision and Development Ordinance.

11-3.7.4. Review and Approval

Upon receipt of any Site Development Plan, the Zoning Administrator shall review it in accordance with the applicable procedures, standards and regulations for Site Development Plans as provided in this Ordinance.

11-3.7.5. Revisions To, Or Deviation From, Approved Plan.

After a Site Development Plan has been approved by the Zoning Administrator, minor adjustments of the plan, which are in substantial compliance with this article and the other provisions of this Ordinance and which serve the overall purposes of this section, may be approved by the Zoning Administrator. Deviation from an approved site plan without the written approval of the zoning administrator shall void the plan and the Zoning Administrator shall require the applicant to resubmit a new plan for consideration. Any major revision of an approved Site Development Plan shall be made in the same manner as the originally approved plan.

**11-3.8 Commission Permit (“2232 Review”) [new]****11-3.8.1 Permit Required**

In accord with the Code of Virginia, §15.2-2232, no street, park or other public area or public structure, public utility, public building or public service corporation facility other than railroads, whether publicly or privately owned, shall be constructed, established or authorized unless and until the general location or approximate location, character and extent thereof has been submitted to and approved by the Planning Commission as being substantially in accord with the adopted comprehensive plan or part thereof.

Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval, unless involving a change in location or extent of a street or public area.

**11-3.8.2. Application**

An application for a commission permit shall be filed with the Zoning Administrator and shall meet the minimum submission requirements as prescribed for a zoning permit in Section 11-3.4.2. and in addition shall include a written statement of justification from the applicant as to why the proposed improvement should be deemed to be in accord with the Comprehensive Plan.

An application is not necessary for features already specifically shown on the Comprehensive Plan, as determined by the Planning Director.

**11-3.8.3. Planning Commission Action**

In connection with any such determination, the Planning Commission may, and at the direction of the Town Council shall, hold a public hearing, after notice as required by §15.2-2204 of the Code of Virginia.

The Planning Commission shall communicate its findings pursuant to this section to the Town Council, indicating its approval or disapproval, along with written reasons therefore. Failure of the commission to act within sixty (60) days of submission of an application, unless such time is extended by the Council, shall be deemed approval.

**11-3. 8.4. Issuance of Permit; Town Council Review**

The Zoning Administrator, on behalf of the Planning Commission, shall issue a Commission Permit following approval by the Planning Commission pursuant to this section. The Council may overrule the action of the Commission by a vote of a majority of its membership.

**11-3. 8.5. Appeal of Denial of Permit**

The owners or their agents may appeal the decision of the Planning Commission to the Council within ten (10) days after the decision of the Commission. The appeal shall be by written petition to the Council setting forth the complete reasons for the appeal. The appeal shall be heard by the Council within sixty (60) days of its submission. A majority vote of the Council shall overrule the Commission.

**11-3. 9. Zoning Amendments *[formerly Article 30]*****11-3. 9. 1 Authority for Change.**

Whenever the public necessity, convenience, general welfare, or good zoning practice require, the Town Council may, by ordinance, amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated by resolution of the Town Council, or by motion of the Planning Commission, or by petition of any property owner, addressed to the Town Council, in accord with the procedures and requirements of this Ordinance.

The regulations, restrictions and boundaries established in this Ordinance may, from time to time, be amended, supplemented, changed, modified or repealed, by ordinance, by a majority vote of the Town Council after recommendation by the Planning Commission, provided that a public hearing shall be held in relation thereto at which parties in interest and citizens shall have an opportunity to be heard; and that notice shall be given of the time and place of such hearing as provided for in §§ 15.2-2204 and 15.2-2285 of the Code of Virginia, as amended.

**11-3. 9. 2 Initiation of Amendment**

Either a zoning map or text amendment may be proposed by resolution of the Town Council, by motion of the Planning Commission, or by application by the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed amendment.

**11-3. . 9. 3 Submission of Application for Amendment.**

Every application for amendment of the Zoning Ordinance shall contain the following items, as applicable. Applicability shall be determined by the Planning Director who may waive or modify any of the designated submission items if appropriate given the nature of the application and so as to facilitate review by the Town and the public. Five (5) copies of the complete application shall be submitted.

1. The applicant's name, address, phone number and email address, and signature.
2. The applicant's authorized representative's name, address, phone number and email address.
3. The property owner's name, address, phone number and email address and signature.
4. A summary of existing data and conditions of the property, including:
  - Existing zoning classification
  - Tax Map and parcel numbers
  - Address of the property
  - Total acreage
5. A plan of the property, at a scale of 1"=200', showing the extent of the area to be rezoned, streets bounding and intersecting the area, the land use and zone classification of abutting districts, and photographs of the area to be rezoned and abutting areas.
6. A plan to a scale of 1" = 200', unless an alternative scale is requested and approved by the Planning Director, indicating the locations of existing and proposed topography, vegetation, floodplain, wetlands, structures, uses, streets, and areas for off-street parking and loading.
7. A boundary survey of the property to be rezoned
8. Information at the time of submission, on all parcels contiguous to the subject property and any property within 100 feet of the boundary, including:
  - Existing zoning
  - Existing land use
  - Proposed land use
  - Historic buildings or structures

9. A statement of justification that explains the circumstances in the proposed district and the abutting districts and any other factors on which the applicant relied as reasons for supporting the proposed zoning amendment, including the degree of compliance of the proposed request and subsequent development plans with the provisions of the Comprehensive Plan.
10. The approximate time schedule for the beginning and completion of development in the area and any proposed phasing of the development.
11. A Concept Development Plan for the property, showing the proposed uses and their general relationships within the site and external to the site, including proposed structures, uses, streets, parking areas, open space areas, vegetation, sidewalks and trails and means of access to the existing road system
12. A Traffic Study that shows the projections for trip generation, traffic volume and levels of service on site and on the adjacent road system, including provisions for safely accommodating both vehicular and pedestrian traffic.
13. Information about the market area to be served by the proposed development if a commercial use, including population, effective demand for proposed business facilities, and any other information describing the relationship of the proposed development to the needs of the market area.
14. A statement of Impact Mitigation describing and analyzing the various impacts of the proposed rezoning, including fiscal, environmental conditions, and public facilities and utilities impacts, and the proposed methods for mitigating any anticipated impacts.
15. Any development conditions or proffers
16. Disclosure of Real Parties in Interest
17. Certificate of Payment of Taxes, verifying that real estate taxes have been paid for all property included in the application.
18. Record of Pre-Application Conference
19. Fees, in accord with the fee schedule adopted by the Town Council
20. A statement describing in detail the existing character of the area.

~~Five (5) copies of the complete application shall be submitted.~~ [moved]



**11-3. 9. 4 Staff Review of Application****1. Pre-Application Conference.**

Prior to filing an application, an applicant shall meet with the Planning Director and discuss the proposed application and land uses and questions regarding the procedures or substantive requirements of this Ordinance. In connection with all such conferences, the Zoning Administrator shall be consulted as appropriate. A request for a pre-application conference shall be made to the Planning Director and shall be accompanied by a sketch map of the site, a description of the proposed project or use, and a list of the issues to be discussed at the conference. The Planning Director shall respond to each written request for a pre-application conference within fifteen (15) calendar days of receipt.

**2. Review of Application for Completeness.**

No application shall be accepted and reviewed unless determined by the Planning Director to be complete. A complete application is one which meets the minimum submission requirements established herein. Each application shall be reviewed to determine if it includes the minimum submission requirements. The Planning Director shall maintain a current log of all pending complete applications.

**3. Acceptance of Complete Application.**

Within fifteen (15) calendar days of submission of the application, the Planning Director shall either officially accept the application as complete and forward to the applicant a notice of acceptance, or reject the application if it is incomplete and forward to the applicant a notice of incompleteness specifying those areas of additional information necessary for acceptance and review.

If a notice of incompleteness is issued, the applicant may resubmit the application with the additional data required. Upon resubmission, the Planning Director will review the resubmitted application in the manner provided in this section for the original application.

If the application is not resubmitted within sixty (60) days of being determined incomplete, the Planning Director shall notify the applicant that the original application has been rejected as incomplete.

4. Referrals. Upon official acceptance of the application for zoning amendment, the Planning Director shall forward a copy of the application to all town departments and county or state agencies whose comments are necessary or desirable for full and appropriate review of the merits of the application.
5. Referral responsibilities. Each reviewing agency shall prepare a staff report of referral comments which sets out in writing its comments and recommendations regarding the application and shall forward such staff report to the Director of Planning.
6. Review of Referrals. All referral comments shall be provided to and reviewed by the Director of Planning within thirty (30) calendar days after an application has been officially accepted. The Planning Director shall forward to the applicant a written review of the issues raised by the application.
7. Applicant Response. Upon receipt of the written report from the Planning Director, an applicant may submit a written request for a meeting with the Planning Director to discuss the matters contained in the report and the application. Such request shall include a response to the matters raised in the Director's written report.
8. Required Action by Other Entities. In the event that this Ordinance requires that an application not be granted until acted upon by some government board or agency other than the Town Planning Commission and Council, the Planning Director shall forward the application for amendment to such board or agency for appropriate action prior to notification to an applicant that an application is ready to be presented to the Planning Commission or Town Council. The Planning Commission may make its recommendations on an application contingent on required action by the other boards or agencies.
9. Report and Notice to Applicant. The Planning Director shall compile the referrals and other information pertinent to the application, prepare a written staff report with proposed findings and recommendations as to the application, and notify the applicant that the report is complete and the application is ready to be presented to the Planning Commission and Town Council for public hearing.
10. Submission to Planning Commission. Within sixty (60) days of formal acceptance of the application, the Planning Director shall forward the application and staff report to the Planning Commission for its review.

**11-3.9.5 Amendment to Application**

An application may be amended by the submission of additional information or proposed changes to the application after it has been officially accepted. If the additional information or proposed changes submitted are to conform with recommendations made by Town staff, commissions or boards, then it shall not be deemed an amendment and the application shall continue to be processed on its original time line.

However, if the additional information or proposed changes submitted by the applicant are at the applicant's request, then the Planning Director shall review the information within fifteen (15) calendar days of receipt and render a finding as to whether the submitted information necessitates repeating any portion of the review process including public hearings. If any portion must be repeated, the Director shall notify the applicant in writing within the fifteen (15) calendar day period that the additional information or proposed changes must be withdrawn, submitted as a new application, or will require the applicant to approve an extension of the time limits prescribed in this Section and such notice shall specify the required extension. The applicant will then have fifteen (15) calendar days to provide the Director with a written response either granting the necessary extension or withdrawing the additional information or proposed changes. If the applicant chooses to withdraw the information, then the application will proceed based on its original timeline.

**11-3.9.6 Withdrawal of Application**

An application for rezoning may be withdrawn at any time upon written request by the applicant and with the consent of either the Planning Commission or the Town Council, whichever body has advertised the hearing; There shall be no refund of rezoning fees in the case of withdrawal either before or after advertising. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action.

**11-3.9.7 Planning Commission Review.**

Within sixty (60) calendar days after a zoning amendment application has been submitted to the Planning Commission from the Planning Director, and generally within one hundred twenty (120) days after official acceptance of the application by the Town, the Planning Commission shall hold a public hearing on the application after notice as required by § 15.2-2204 of the Code of Virginia.

**11-3. 9. 8 Report by Planning Commission**

The Planning Commission shall report to the Town Council its recommendation with respect to the proposed amendment. Failure of the Planning Commission to report to the Town Council within one hundred (100) days after the first meeting of the commission after the proposed amendment or reenactment has been referred to the commission, shall be deemed a recommendation for approval, unless the proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of the time period

If the proposed amendment consists of a change in the text of this Ordinance, the Commission may recommend revisions to the proposal. If the proposed amendment consists of a change in zoning district boundaries, it may recommend that the land be rezoned to a different zoning district classification than that requested if the Commission is of the opinion that such revision is in accord with sound zoning practice and the adopted Comprehensive Plan, is in furtherance of the purposes of this Ordinance and is not more intensive than the advertised/noticed proposed use. Before recommending a larger extent of land or a rezoning to a more intensive classification than was set forth in the application, the Commission shall hold an additional duly noticed public hearing on the matter.

In recommending the approval or denial of any proposed amendment to this Ordinance, the Planning Commission should state its reasons for such recommendation.

Tabling or deferring an application for rezoning on the grounds of inadequate data may be requested by the applicant for a period of no longer than ninety (90) days, after which the application shall be considered to be automatically withdrawn. All costs involved in re-applying and re-advertising shall be paid by the applicant.

**11-3. 9. 9 Town Council Review and Action.**

After receiving the report of the Planning Commission, or after the lapse of one hundred (100) days past the initial meeting of the Planning Commission on the application without Commission recommendation, the Town Council shall hold its own public hearing after notice and advertising required by § 15.2-2204 of the Code of Virginia. The Council may approve the zoning amendment as requested by the applicant, it may deny the amendment, or it may approve a zoning classification of less intensity than that requested, if available in the Ordinance, without holding a new hearing. No land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing. The Town

Council must act on the proposed zoning amendment within one year of official acceptance of the application.

#### **11-3. 9. 10 Evidentiary Matters Before the Town Council**

All information, testimony or other evidence presented by an applicant for a zoning amendment shall be presented to the Planning Commission in conjunction with its review and hearing on the application. If the Town Council determines that an applicant is presenting evidence which is substantially or materially different from that presented to the Commission, the Council may refer the application back to the Commission for such additional consideration and action as the Council may deem appropriate. All costs in re-advertising shall be paid by he applicant.

#### **11-3. 9.11 Contesting a Decision of the Town Council**

Every action contesting a decision of the Town Council for granting or failing to adopt a proposed zoning ordinance or amendment thereto or granting or failing to grant a special exception or special use permit, shall be filed within thirty (30) days of such decision with the Fauquier County Circuit Court.

#### **11-3. 9.12 Criteria for Consideration of Zoning Map Amendments.**

In considering requests for zoning map amendments, the Planning Commission and Town Council should consider, among other issues, the following factors:

1. whether the rezoning request, if granted, would further the public interest, and whether it conforms with the goals, objectives, and policies of the Comprehensive Plan;
2. whether the rezoning is consistent with the town's Future Land Use Plan, as identified in the Comprehensive Plan, and established character of the area and land use patterns;
3. whether the rezoning is justified by changed or changing conditions;
4. whether the rezoning, if granted, would create an isolated district unrelated to adjacent districts;
5. whether utility, sewer and water, transportation, school, recreation, stormwater management and other facilities exist or can be provided to serve the uses that would be permitted on the property if it were rezoned;

6. whether the rezoning will be compatible with properties and uses in the vicinity and not have an adverse impact on these properties or their values; and
7. whether there are adequate sites available elsewhere in the Town for the proposed use, or uses, in districts where such uses are already allowed.
8. whether the impact that the uses that would be permitted if the property were rezoned will have upon the volume of vehicular and pedestrian traffic and traffic safety in the vicinity and whether the proposed rezoning provides sufficient measures to mitigate such impacts
9. whether a reasonable and viable economic use of the subject property exists under the current zoning.
10. whether the effect of the proposed rezoning on environmentally sensitive land or natural features, wildlife habitat, vegetation, water quality and air quality is compatible with the Town's Comprehensive Plan.
11. whether the proposed rezoning encourages economic development activities in areas designated by the Comprehensive Plan and provides desirable employment and enlarges the tax base.
12. whether the proposed rezoning considers the current and future requirements of the community as to land for various purposes, including housing and business, as determined by population and economic studies.
13. the effect of the proposed rezoning to provide moderate housing by enhancing opportunities for all qualified residents of the Town.
14. the effect of the rezoning on natural, scenic, archaeological, or historic features of significant importance.

#### **11-3. 9.13 Criteria for Consideration of Text Amendments.**

If the request is for an amendment of the text of this Ordinance, the Planning Commission and Town Council shall consider the following matters, in addition to any relevant matters included in Section 11-3.9.12:

1. Whether the proposed text amendment is consistent with the Comprehensive Plan.
2. Whether the proposed text amendment is consistent with the intent and purpose of this Ordinance.

**11-3. 9.17 Joint Public Hearing.**

The Town Council and the Planning Commission may hold a joint public hearing following proper public notice under § 15.2-2204 of the Code of Virginia, as amended.

**11-3. 9. 18 Majority Requirement for Change in Ordinance.**

An affirmative vote of at least a majority of the members of the Town Council shall be required to adopt, amend, or reenact a zoning ordinance.

**11-3. 9.19 Timing of Application Consideration and Reconsideration**

Proposed amendments shall be considered as soon as feasible, based on the regular schedule of the Planning Commission and the Town Council meetings and the schedule of newspaper publication relative to public notice.

Upon the denial of any application filed to change a zoning district designation, no further application concerning any or all of the same property shall be filed for rezoning to the same use in less than twelve (12) months from the time of denial by the Town Council, unless this requirement is specifically waived by the Town Council.

**11-3. 9.20 Conditional Zoning [existing section 30-9]****1. Purpose and Authority**

As part of a petition to rezone property and amend the official zoning map, the property owner may voluntarily proffer in writing certain conditions and restrictions on the use and development of his property, such conditions being in addition to, or modification of, the regulations provided for a particular zone or zoning district by this Ordinance. The Zoning Administrator shall be vested with all necessary authority to administer, interpret and enforce such conditions and restrictions, all in accordance with the terms of §15.2-2296 et seq. of the Code of Virginia, as amended.-

While the conditions may vary from property to property by reason of the nature of the use and different circumstances at a particular location, it is not the intention of this section to authorize conditions limited to a particular individual or group, owner, or operator, and the provisions of this section shall not be used for the purpose of discrimination in housing.

## 2. Proffered Conditions.

As a part of an application for rezoning or amendment to the zoning district map, the owner or owners of the property involved may, prior to a public hearing before the Town Council, voluntarily proffer in writing such reasonable conditions, in addition to the regulations provided for the zoning district or districts as herein set forth, as he deems appropriate for the particular case to address impacts of the proposed use.

For the purpose of this Ordinance, proffered conditions may include written statements, development plans, profiles, elevations, and/or other demonstrative materials. Materials of whatever nature and intended as proffers shall be annotated with the following statement signed by the owner or owners of the subject property: "I (we) hereby voluntarily proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission unless an amendment thereto is mutually agreed upon by the Town Council, and the undersigned."

## 3. When Proffers Are Made.

Proffered conditions should be submitted for Staff review as part of the initial application for rezoning.:-

Proffered conditions made at the Planning Commission meeting shall be forwarded to the Town Council prior to the Council's public hearing.

To be considered by the Planning Commission, proffers must be submitted with the application prior to advertising for public hearing.

## 4. Contents of Proffer.

Proffered conditions shall be signed by all persons having an ownership interest in the property and shall be notarized. Proffered conditions shall contain a statement that the owners voluntarily enter into the proffers contained therein.

## 5. Review and Revision of Proffered Conditions.

Additional conditions may be proffered by the applicant during or subsequent to the public hearing before the Planning Commission, provided however that after proffered conditions are signed and made available for public review and the public hearing before the Town Council has been advertised (whether or not jointly held with the Planning Commission) no change or modification to any



proffered condition shall be approved without a second advertised public hearing thereon.

6. Modifications to Proffers.

After the Town Council's public hearing has been advertised, , should additional or modified conditions be proffered by the applicant, which conditions were specifically discussed at the public hearing before the Planning Commission, then a second public hearing need be held only before the Town Council before the application and the modified conditions can be reviewed and acted on by the Council.

7. Additional Conditions.

Should additional conditions be proffered by the applicant at the time of the public hearing before the Town Council, which conditions were not addressed at the public hearing before the Planning Commission, or if the proffered conditions are modified beyond the scope of any conditions considered at the public hearing before the Planning Commission, the application shall be the subject of a second public hearing before both the Planning Commission and the Town Council, which hearing may be held either separately or jointly.

8. Annotation of Zoning District Map.

The zoning district map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The Zoning Administrator shall keep in his office and make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district. Such conditions shall become a part of the zoning regulations applicable to the property in question, regardless of changes in ownership or operation, unless subsequently changed by an amendment to the zoning district map, and such conditions shall be in addition to the specific regulations set forth in this Ordinance for the zoning district in question.

9. Enforcement of Conditions.

The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer, interpret and enforce conditions attached to a rezoning or amendment to the zoning district map, including: (a) the ordering in writing of the remedy of any noncompliance with such conditions; (b) the bringing of legal action to insure compliance with such conditions, including

injunction, abatement, or other appropriate action or proceeding; and (c) requiring a guarantee, satisfactory to the Town Council, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. Provided, further, that failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

Upon approval by the Town Council, proffered conditions shall become a part of the zoning regulations applicable to the property, and are enforceable under the same provisions for enforcement as all other provisions in the Ordinance.

10. Substantial Conformance Required.

Upon approval, any site plan, subdivision plat or development plan thereafter submitted for the development of the property in question shall be in substantial conformity with the approved zoning and all proffered statements, plans, profiles, elevations, or other demonstrative materials, and no development shall be approved by any Town official in the absence of said substantial conformity.

11. Substantial Conformance Defined.

For the purpose of this Section, substantial conformity-mean that conformity which leaves a reasonable margin for adjustment due to final engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials presented or proffered by the applicant. Determinations of substantial conformance shall be made by the Zoning Administrator.

12. Guarantee for Construction of Improvements.

A guarantee, satisfactory to the Town Council, may be required in an amount sufficient for and conditioned upon the construction of any public improvements required by a rezoning request and the proffered conditions. This guarantee may be reduced or released by the Council or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been completed in whole or in part. The guarantee shall be required no later than final site plan or subdivision approval, whichever may occur earlier in time.

13. No Permits Shall Be Issued That Do Not Comply With Proffers.

Failure to meet or comply with any proffered conditions shall be sufficient cause to deny the issuance of any site plan or subdivision approvals, grading permits, zoning permits, building permits, or certificates of occupancy as may be determined appropriate by the Zoning Administrator. In addition to the other penalties appropriate for violations of this Ordinance, failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any development approvals or permits relating to the land area which was the subject of the conditional zoning. To this end, each application for a development approval or permit shall include an affidavit by the applicant that all applicable proffers have or will be complied with as agreed upon at the time of rezoning. The burden shall be on the applicant to verify that proposed development complies with all proffered conditions.

14. Appeal of Proffer Decision.

Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal such decision to the Town Council. Such appeal shall be filed within thirty (30) calendar days from the date of the decision being appealed by filing a notice of appeal with the Zoning Administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the complete basis for the appeal. Upon receipt of the appeal notice, the Council shall take such testimony as it deems appropriate and should render its decision within sixty (60) calendar days after receipt of the appeal notice. The Town Council may reverse or affirm wholly or partly or may modify the decision of the Zoning Administrator.

15. Change of Approved Conditions.

Once proffered conditions have been approved, and there is cause for an amendment which would not be in substantial conformity with them, then an application shall be filed for an amendment of the proffered conditions. If the amendment concerns an approved site development plan, such application shall include the submission requirements for a site development plan set forth in Section 11-3.7 of this Ordinance, except that the Planning Director may waive any submission requirement if such requirement is not necessary for an adequate review of the amendment application. Such amendment shall be the subject of public hearing in accordance with the requirements for a new application.

**11-3.10 Special Use Permits [Section 4-8 in existing ordinance]****11-3. 10.1 Authorization.**

~~The Town Council may grant special use permits under suitable regulations and safeguards for those uses listed as "Uses Permitted by a Special Use Permit" in the district regulations upon finding that the use will not be detrimental to the character and development of the adjacent land, and will reflect the spirit and intent of the Comprehensive Plan, as well as this Ordinance. Special use permits granted by the Town Council are distinguished from special exceptions authorized to be granted by the Board of Zoning Appeals under Article 29.~~

~~A site plan, meeting the requirements of Article 27, must be submitted for review within one (1) year of Town Council approval of the Special Use Permit or the Permit shall be null and void. If the Permit is allowed to lapse, the property owner shall be required to reapply following the provisions of this Article.~~

Uses listed in the district regulations as "permissible uses upon approval by the Town Council" shall be reviewed and acted upon by the Planning Commission and Town Council as provided in Section 11-3.3.11.8 of this Ordinance.

Uses listed in the district regulations as "permissible uses upon approval by the Board of Zoning Appeals" shall be reviewed and acted upon by the Board of Zoning Appeals as provided in Section 11-3.11.11 of this Ordinance.

Special use permits may be granted to establish or construct uses or structures which have the potential for a deleterious impact upon the health, safety, and welfare of the public upon finding that the use, with conditions, will not have a deleterious impact, and will reflect the spirit and intent of the Comprehensive Plan as well as this Ordinance.

In acting on a request for a special use permit, the BZA or the Town Council, whichever applies, shall consider the impact of the requested special use.

Only those special use permits that are expressly authorized in a particular zoning district, or elsewhere in this Ordinance may be approved. The Council or BZA may approve special use permits subject to conditions on such permits that shall apply to the property or use, regardless of any change in ownership.

**11-3. 10.2 Application.**

Application for a special use permit shall be filed on the appropriate form therefore as provided by the ~~Planning Director~~ Zoning Administrator and in accordance with the instructions which accompany the form. Special use permit applications shall contain the same information as required for zoning amendment applications set forth in Section 11-3.10. In addition, the applicant shall provide all of the information, data, and studies needed to allow the Planning Commission and Town Council and/or BZA, to reach conclusive evaluations, which shall include, but not be limited to, the following:

- 1 A Statement of Justification explaining the compatibility of the proposed use with the existing and proposed land uses adjacent to and in the vicinity of the site and any potential impacts on the environment and on the neighborhood due to the proposed use intensity, number of participants, acreage, hours of operation, traffic, lighting, and access, as well as the matters set forth in section 11.3-11.3.
- 2 A vicinity map depicting the adjacent and nearby (within 1,000 feet) land uses, streets and other data customarily incidental to a vicinity map.
- 3 A proposed site development plan indicating the location of the anticipated structures, setback lines, street pattern, parking provisions, a screening plan, and common open space if applicable. Such plans shall be contained on sheets measuring a minimum of 18" X 24" and a maximum of 36" X 24".
- 4 An analysis of the impact on the Town's transportation network and the ability of adjacent streets and intersections to efficiently and safely move the volume of traffic generated by the development, along with estimates of cost and means of providing improvements required to service the proposed special use.
- 5 An analysis of the impact on the Town's community facilities including estimates of costs and means of providing the additional community facilities which will be needed to serve the proposed special use. Community facilities include, but shall not be limited to, sewage disposal facilities and systems, solid waste disposal facilities and systems, water supply facilities and systems, storm drainage facilities and systems, and electrical utility facilities and systems.
- 6 An analysis of the ability of the Town to provide police and fire protection to the proposed special use.

- 7 The proposed configuration and intensity of lighting facilities to be arranged in such a manner to protect the streets and neighboring properties from direct glare or hazardous interference.
- 8 Noise impact and abatement studies to determine potential impact on adjoining properties and neighborhoods.
- 9 The delineation of any necessary screening for any uses or structural features deemed to be incompatible with the objectives of this Article, the remainder of this Zoning Ordinance, or the Comprehensive Plan including walls, fences, plantings, and/or other enclosures. Other landscaping to enhance the effectiveness of the screening and to insure the compatibility of use may also be required.
- 10 The delineation of screening and buffering of all parking areas will be required in accordance with a landscaping plan. -Parking areas forward of the established building setback line will be prohibited.
- 11 The delineation of major trees on the site. Except to protect the public safety, avoid property loss, or provide for required parking, all major trees forward of the building setback line may be required for preservation if their removal would diminish the character of the neighborhood ~~as determined by the Planning Director.~~

#### **11-3. 10.3. Evaluation Criteria; Issues for Consideration**

In considering a Special Use Permit application, the following factors should be considered. The applicant also shall address these factors in its statement of justification:

1. Whether the proposed Special Use Permit is consistent with the Comprehensive Plan.
2. Whether the proposed Special Use Permit will adequately provide for safety from fire hazards and have effective measures of fire control.
3. The level and impact of any noise emanating from the site, including that generated by the proposed use, in relation to the uses in the immediate area.
4. The glare or light that may be generated by the proposed use in relation to uses in the immediate area.
5. The proposed location, lighting and type of signs in relation to the proposed use, uses in the area, and the sign requirements of this Ordinance.

6. The compatibility of the proposed use with other existing or proposed uses in the neighborhood, and adjacent parcels.
7. The location and area footprint with dimensions (all drawn to scale), nature and height of existing or proposed buildings, structures, walls, and fences on the site and in the neighborhood.
8. The nature and extent of existing or proposed landscaping, screening and buffering on the site and in the neighborhood.
9. The timing and phasing of the proposed development and the duration of the proposed use.
10. Whether the proposed Special Use Permit will result in the preservation or destruction, loss or damage of any significant topographic or physical, natural, scenic, archaeological or historic feature.
11. Whether the proposed Special Use Permit at the specified location will contribute to or promote the welfare or convenience of the public.
12. The traffic expected to be generated by the proposed use, the adequacy of access roads and the vehicular and pedestrian circulation elements (on and off-site) of the proposed use, all in relation to the public's interest in pedestrian and vehicular safety, efficient traffic movement and access in case of fire or catastrophe.
13. Whether the proposed use will facilitate orderly and safe road development and transportation.
14. Whether, in the case of existing structures proposed to be converted to uses requiring a Special Use Permit, the structures meet all code requirements of the Town of Warrenton.
15. Whether the proposed Special Use Permit will be served adequately by essential public facilities, services and utilities.
16. The effect of the proposed Special Use Permit on environmentally sensitive land or natural features, wildlife habitat and vegetation, water quality and air quality.
17. Whether the proposed Special Use Permit use will provide desirable employment and enlarge the tax base by encouraging economic development activities consistent with the Comprehensive Plan.
18. The effect of the proposed Special Use Permit use in enhancing affordable shelter opportunities for residents of the County.

- 19. The location, character, and size of any outdoor storage.
- 20. The proposed use of open space.
- 21. The location of any major floodplain and steep slopes.
- 22. The location and use of any existing non-conforming uses and structures.
- 23. The location and type of any fuel and fuel storage.
- 24. The location and use of any anticipated accessory uses and structures.
- 25. The area of each proposed use.
- 26. The proposed days/hours of operation.
- 27. The location and screening of parking and loading spaces and/or areas.
- 28. The location and nature of any proposed security features and provisions.
- 29. The number of employees.
- 30. The location of any existing and/or proposed adequate on and off-site infrastructure.
- 31. Any anticipated odors which may be generated by the uses on site.
- 32. Refuse and service areas.

**11-3. 10.4. Conditions and Restrictions**

In approving a Special Use Permit, the Town Council or Board of Zoning Appeals may impose such conditions, safeguards and restrictions as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such special uses upon other properties in the neighborhood, and to carry out the general purpose and intent of this Ordinance. Conditions and restrictions may include, but are not limited to, those related to fencing, planting or other landscaping, additional set backs from property lines, location and arrangement of lighting, setting of reasonable time limitations and other reasonable requirements deemed necessary to mitigate the impacts of the use and safeguard the interests of the public. The Council or Board may require a guarantee or bond to ensure that conditions imposed will be complied with. All required conditions shall be set out in the documentation approving the Special Use Permit.



**11-3. 10.5. Period of Validity**

As a condition of approval, a special use permit may be granted for a specific period of time with expiration of the approval to occur at the termination of a stated period. In such case, an extension may be granted prior to expiration by the original approving body, upon written application, without notice or hearing. After expiration, no extension may be granted without complying with the requirements for an initial application for a special use permit.

**11-3. 10.6. Staff Review**

Wherever a use or structure is listed either as a permissible use subject to approval of a special use permit, application shall be made to the Planning Director who shall prepare a report and refer such application to the Planning Commission for those uses that are listed as permissible upon approval by the Town Council, and to the Board of Zoning Appeals for those uses listed as permissible upon approval by the Board. Application for a special use permit shall be filed, containing such material and be processed in the same manner as for zoning amendments as provided for in Section 11-3.10. A Special Use Permit may be submitted in conjunction with a zoning map amendment application.

**11-3. 10.7. For Uses to be Acted Upon by the Town Council, as listed in Article 3****~~4-8.4 Planning Commission Review.~~**

Upon review of the application and supporting data, the Planning Commission shall make its recommendation to the Town Council as to whether the application complies with ~~the spirit and intent of~~ the special use provisions in the particular district and the Comprehensive Plan, including verification that the use is specifically authorized within the district, and whether it should be approved or denied.

**~~4-8.5 Planning Commission Hearing.~~**

Before submitting its recommendation to Town Council, the Planning Commission shall hold a public hearing which may be a joint public hearing with the Town Council, after notice as required by § 15.2-2204 of the Code of Virginia, as amended. Following the public hearing, the Commission shall forward its recommendation to the Town Council.

**11-3. 10.8 Town Council Review and Hearing.****~~4-8.3 Town Council Review.~~**

For those uses that are listed as permissible upon approval by the Town Council, the Town Council shall consider the recommendations of the Town Planning Commission

before granting or denying approval of a special use permit. Before rendering a decision on a particular special use permit, the Town Council shall hold a public hearing, which may be a joint public hearing with the Planning Commission, after notice as required by § 15.2-2204 of the Code of Virginia, as amended.

#### **11-3. 10.9. Modifications to the Application or Conditions.**

For those uses that are listed as permissible upon approval by the Town Council, after the Planning Commission has made its recommendation to the Town Council, should the application be modified, or additional conditions be agreed to or offered by the applicant, then a second public hearing shall be held by the Planning Commission before the modified application can be heard by the Town Council. The applicant shall be responsible for paying any additional advertising fees required for a subsequent public hearings before the Planning Commission and the Town Council. The Town Council may still impose reasonable conditions on the applicant, in accord with § 15.2-2286 of the Code of Virginia, as amended.

However, should additional information or modified conditions be submitted by the applicant after the Planning Commission has made its recommendation to the Town Council, which modifications or conditions were discussed at the public hearing before the Planning Commission, then a second public hearing before the Planning Commission shall not be required.

#### **11-3. 10.10 For Uses to be Acted Upon by the Board of Zoning Appeals**

Upon review of the application and supporting data, and before rendering a decision on a particular special use permit, the Board of Zoning Appeals shall hold a public hearing after notice as required by § 15.2-2204 of the Code of Virginia, as amended, and subsequently shall determine whether the application complies with the special use provisions in the particular district and the Comprehensive Plan, including verification that the use is specifically authorized within the district, and whether it should be approved or denied.

#### **11-3. 10.11 Construction Already Commenced. *[existing 4-10]***

Nothing contained herein shall require any change in the plans or construction of any building or structure subject to a vested right ~~for which a permit was granted~~ prior to the effective date of this Ordinance. ~~However, such construction must commence within thirty (30) days after this Ordinance becomes effective. If construction is discontinued for a period of six (6) months or more, further construction shall be in conformity with the provisions of this Ordinance for the district in which the operation is located.~~

~~4-10.1~~—Twelve copies of the Final Plat shall be submitted to the Planning Director at least twenty one (21) days prior to the scheduled meeting of the Planning Commission and shall be forwarded by the Planning Director to the Planning Commission.

~~4-9~~ **Sketch Plan Requirements.** In order to facilitate an early understanding of potential substantive and administrative problems, a preliminary sketch plan shall be submitted to the Planning Director for review and comment prior to submittal of a formal application for a rezoning, a special use permit, a cluster development, or a Planned Unit Development. The preliminary sketch plan shall be drawn approximately to scale and shall generally include the following information, as applicable:

- ~~— Justification for request.~~
- ~~— Area requested for each use if more than one use is planned, and anticipated phasing.~~
- ~~— Topography at no greater than ten (10) foot contour interval.~~
- ~~— Proposed density of population, number of units and types of units in all residential areas.~~
- ~~— Plan of community facilities.~~
- ~~— Plan of utilities.~~
- ~~— Plan of open space.~~

This preliminary sketch plan is to be distinguished from the preliminary plat required by the Subdivision Ordinance and the Site Development Plan required by ~~Article 27~~, both of which may also be subsequently required.

### 11-3.11 Variances *[existing section 21-6]*

#### 11-3.11.1. Variances Determined by the Board of Zoning Appeals

##### 1. Variances Authorized

The Board of Zoning Appeals may authorize variances from the terms of this chapter as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided, that the spirit of this Ordinance shall be observed and substantial justice done.

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of specific piece of property at the time of effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or the use or development of property immediately adjacent thereto, the strict application of the terms of the

Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance, the Board may grant a variance to alleviate those conditions, under the terms and procedures provided for herein.

No such variance shall be authorized by the Board unless it finds:

- i. That the strict application of the Ordinance would produce undue hardship;
- ii. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- iii. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
- iv. That the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance.

## **2. Board May Impose Conditions**

In authorizing a variance the Board may impose such conditions regarding the location, character, and other features of the proposed structure for use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

## **3. Public Hearing Required**

No variance shall be authorized except after notice and hearing as required by §15.2-2204 of the Code of Virginia as amended.

*[Note: The following provisions are currently shown in the Special Exception category of the existing ordinance; however, they do not clearly qualify as “true” variances]*

#### **~~4.—Specific Variances~~**

~~The following buildings and uses may be permitted by the Board as variances under the terms and conditions of this section:~~

- ~~i—A garage or other building accessory to a single family dwelling which building does not comply with the regulations of the district in which it is located.~~
- ~~ii—Extension of a nonconforming use in a building so as to increase floor area by not more than twenty-five (25) percent.~~
- ~~iii—Restoration, repair, or replacement of a nonconforming activity destroyed or damaged by more than fifty (50) percent or a nonconforming structure destroyed or damaged by more than seventy-five (75) percent of the cost of restoration of the activity or structure.~~
- ~~iv—Temporary uses and structures in any district not specifically listed in the regulations and determined by the Board to be in the public interest for the district in which located, provided that such uses be of a temporary nature and do not involve the erection of substantial buildings. Such use or structure shall be authorized by the issuance of a temporary and revocable permit for not more than a twenty-four (24) month period subject to such conditions as will safeguard the public health, safety, and welfare.~~
- ~~v—An exception in the yard regulations on a lot where on the adjacent lot, there is a front, side, or rear yard that does not conform with such yard regulations in a way similar to the exception applied for, but not to encroach upon an existing or proposed right-of-way.~~
- ~~vi—An exception in the depth of a rear yard on a lot, in a block where there are nonconforming rear yards.~~
- ~~vii—An exception where there are irregularities in depths of existing front yards on a street frontage on the side of a street between two (2) intersecting streets, so that any one of the existing depths shall for a~~

~~building hereafter constructed or extended be the required minimum front yard depth.~~

~~viii Construction of a single family dwelling with reduced yard spaces on a legal nonconforming lot.~~

**~~5. Variances Within the Floodway District.~~**

~~In addition to the Provisions of Section 11-3.12.1.1 through 11-3.12.1.4, the Board of Zoning Appeals shall consider variances from the regulations of the Flood Plain District under the guidelines outlined in Article 3.~~

**11-3.11.2. Unauthorized Variances**

1. No variance shall be authorized that would permit the establishment of any use not otherwise permitted in the zoning district under the specific provisions of this Ordinance.
2. No variance shall be authorized that would result in an increase in density from that permitted by the applicable zoning district regulations.
3. No variance shall be authorized that would relate to nonconforming uses.
4. No variance shall be authorized that would reduce the amount of off-street parking space required by Article 7.
5. No variance shall be authorized that would relate to signs.
6. No variance shall be authorized in cases where the applicant, subsequent to the effective date of this Ordinance, has purchased a portion of a larger parcel, which portion has an area or width less than required by the provisions of this Ordinance at the time of such purchase or which portion has unusual physical characteristics, that are set forth as the basis for the application for a variance, which would not exist if such portion had not been detached by such purchase from the larger parcel of which it was a part.
7. No variance shall be authorized that would permit the establishment of any use not otherwise permitted in a floodplain.
8. No variance shall be authorized merely for the purpose of convenience or economic hardship.

**11-3.11.3. Procedures for Variances****1. Application for Variance**

Pursuant to provisions of this article and §15.2-2309 of the Code of Virginia, as amended, any person seeking a variance from the application of regulations of this chapter, shall first submit his proposal to the Zoning Administrator on a form to be provided by the Zoning Administrator, including therewith satisfactory evidence that any delinquent real estate taxes owed to the county which have been properly assessed against the subject property have been paid, and all plans and information relating to the application required by the board of zoning appeals pursuant to §15.2-2310 of the Code of Virginia. The application shall be transmitted promptly to the secretary of the Board of Zoning Appeals, who shall place the matter on the docket to be acted upon by the board.

The Zoning Administrator shall also transmit a copy of the application to the local Planning Commission which may send a recommendation to the Board or appear as a party at the hearing.

**2. Decision on Variance Application**

Upon receipt of an application or appeal, the Board of Zoning Appeals shall fix a reasonable time for a hearing of such application or appeal in conformance with §15.2-2204 of the Code of Virginia.

The proposal shall then be advertised pursuant to provisions of §15.2-2204 of the Code of Virginia prior to public hearing by the Board of Zoning Appeals. The Zoning Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.

The Board of Zoning Appeals shall render a decision on any application submitted to it within sixty (60) days after the date of the hearing thereon.

**3. Burden of Applicant**

The applicant for a variance shall bear the burden of producing evidence to support the required findings and to establish that the requested variance satisfies all standards for a Variance.

#### **4. Withdrawal of Application**

An application or appeal to the Board of Zoning Appeals may be withdrawn by the applicant or appellant at any time prior to the deadline for cancellation of the newspaper advertisement for the first public hearing.. After such deadline, an application or appeal may be withdrawn only with the permission of the Board of Zoning Appeals. An application or appeal which is not withdrawn pursuant to this subsection shall be either granted or denied on its merits.

#### **5. Re-Application**

If any application is denied by the Board of Zoning Appeals on its merits, no application requesting the same relief with respect to all or part of the same property shall be considered by the Board within twelve (12) months after the date of such denial.

### **11-3.12 Appeal to the Board of Zoning Appeals**

#### **11-3.12.1 When Appeals May be Taken**

1. An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the Zoning Administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article or any ordinance adopted pursuant thereto.
2. Such appeal shall be made within thirty (30) days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certified to the Board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise, than by a restraining order granted by the ~~Board or by~~ a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

#### **11-3.12.2 Appeal Procedure**

1. Appeals shall be filed with the Board of Zoning Appeals in care of the Zoning Administrator, who shall provide a copy of the appeal to the



secretary of the Board, and a third copy provided to the individual, official, department, or agency concerned, if any.

2. Appeals requiring an advertised public hearing shall be accompanied by cash payments to the Town in accordance with the Fee Schedule as set by Town Council by resolution.
3. Upon receipt of an application or appeal, the Board shall fix a reasonable time for the hearing, give public notice thereof in accord with § 15.2-2204 of the Code of Virginia, as well as due notice to the parties in interest.
4. The Board shall make its decision within ninety days of the filing of the application or appeal.
5. In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the Ordinance or to effect any variance from the Ordinance.
6. The Board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

#### **11-3.12.3 Withdraw of Appeal**

An application or appeal to the Board of Zoning Appeals may be withdrawn by the applicant/appellant at any time prior to the deadline for cancellation of the newspaper advertisement provided for in this article. After such deadline, an application or appeal may be withdrawn only with the permission of the Board. An application or appeal which is not withdrawn pursuant to this subsection shall be either granted or denied on the merits by the Board, either in whole or in part.

#### **11-3.12.4 Court Petition**

1. Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board, or bureau of the Town may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board.

2. Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowances of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board, and on due cause shown, grant a restraining order.
3. The Board of Zoning Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
4. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
5. Costs shall not be allowed against the Board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from.

#### **11-4 Non-Conforming Uses and Structures [formerly Article 28]**

##### **11-4.1 Purpose**

The purpose of this section is to regulate and limit the development and continued existence of uses, structures, and lots legally established prior to the effective date of this Ordinance which do not conform to the requirements of this Ordinance. Many nonconformities may continue, but the provisions of this subsection are designed to curtail substantial investment in nonconformities and to bring about their eventual improvement to a conforming status or elimination in order to preserve the integrity of this Ordinance and the desired character of the Town and to protect the public health and safety.

Any nonconforming use, structure, or lot which lawfully existed as of the effective date of this Ordinance and which remains nonconforming, and any use, structure, or lot which has

become nonconforming as a result of the adoption of this Ordinance or any subsequent reclassification of zoning districts or other amendment to this Ordinance, may be continued or maintained only in accordance with the terms of this section. The limitations of this section shall not apply to structures or lots whose nonconforming features are the subject of a variance that has been granted by the Board of Zoning Appeals or by the Zoning Administrator, or a modification or condition that was approved by the Town Council.

It is the intent of this chapter to abide by the letter and spirit of the provisions of § 15.2-2307 of the Code of Virginia. It is further the intent of this chapter that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the districts involved.

#### **11-4.2 Continuation**

- 11-4.2.1 If at any time after the enactment of this Ordinance a lawful use of land and/or structures exists which would not be permitted by this chapter, the use may be continued so long as it remains otherwise lawful. A use of land or use of structure established in violation of contemporary zoning regulations is illegal, not nonconforming.
- 11-4.2.2 If any change in title of possession or renewal of a lease of any such lot or structure occurs, the use existing may be continued.
- 11-4.2.3 If any nonconforming use (structure or activity) is discontinued for a period exceeding two (2) years, after the enactment of this Ordinance, it shall be deemed abandoned and any subsequent use shall conform to the requirements of this Ordinance.
- 11-4.2.4 Whenever a nonconforming structure, lot, or activity has been changed to a more restricted nonconforming use, such existing use may only be changed to a use of the same restricted category or an even more restricted use or to a conforming use.

#### **11-4.3 Non-Conforming Uses**

##### **11-4.3.1 Expansion**

No nonconforming use shall be enlarged, increased or extended to occupy a greater area of land than was occupied on the effective date of this provision to the Ordinance, unless such enlargement does not result in an increase in nonconformity or results in a change to a use permitted in the district.

**11-4.3.2 Discontinuance**

If any nonconforming use of land and/or structure ceases for any reason for a period of more than two (2) years, , any subsequent use of such land and/or structure shall conform to the regulations specified by this chapter for the district in which such land is located.

**11-4.3.3 Superseded**

When any nonconforming use, or nonconforming structure and use in combination, is superseded by a permitted use and/or structure, the use shall thereafter conform to the regulations for the district, and no nonconforming use and/or structure shall thereafter be resumed.

**11-4.3.4 Moving**

No such nonconforming use and/or structure shall be moved in whole or in part to any portion of the land or parcel other than that occupied by such use and/or structure at the effective date or amendment of this ordinance, unless such move results in decreasing the degree of nonconformity or results in conformity with the requirements for the district.

**11-4.3.5 Additional Uses**

No additional uses which would be prohibited in the district involved shall be allowed.

**11-4.3.6 Special Use Permits**

Any lawful existing use which is permissible as a special permit use in a district under the terms of this Ordinance shall not be deemed a nonconforming use in such district, but shall, with written notification and proof to the Zoning Administrator, be considered a lawful conforming use in that district.

**11-4.4 Non-Conforming Structures and Buildings****11-4.4.1 Repairs and Maintenance**

On any building or structure devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent-not exceeding twenty (20) percent of the current replacement value of the

structure provided that the cubic content of the structure as it existed at the time of passage or amendment of this Ordinance shall not be increased. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

#### **11-4.4.2 Expansion or Enlargement**

A nonconforming structure to be extended or enlarged shall conform with the provisions of this Ordinance, except as provided for herein. No nonconforming use and/or structure shall be enlarged, increased or extended to occupy a greater area of land than twenty-five percent (25%) more than was occupied on the date of adoption or amendment of this ordinance unless such enlargement does not result in an increase in nonconformity or results in a change to a use permitted in the district.

#### **11-4.4.2 Restoration or Replacement**

1. If a nonconforming use or structure is destroyed or damaged in any manner to the extent that the cost of restoration to its condition before the occurrence shall exceed seventy-five (75) percent of the cost of reconstructing the entire structure, it shall be restored only if it complies with the requirements of this Ordinance.
2. Where a conforming structure devoted to a nonconforming activity, or where a nonconforming structure is damaged less than seventy-five (75) percent of the cost of reconstructing the entire structure, either may be repaired or restored, provided any such repair or restoration is started within twelve (12) months and completed within eighteen (18) months from the date of partial destruction.
3. Historic structures designated as contributing structures to an Historic District adopted by the Town Council shall be exempt from the limitations of Sections 11-4.4.2.1 and 11-4.4.2.2.
4. The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any structure or activity devoted to a nonconforming use.
5. If a nonconforming structure or portion thereof containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, rebuilt or used, except in conformity with the regulations of the district in which it is located.

**11-4.4.3     Pre-existing Setback**

Any structure which existed on the date of adoption of this Ordinance which is nonconforming solely due to a setback or yard requirement imposed by this Ordinance may be enlarged, increased, extended, repaired or replaced so long as any such improvements do not result in an increase in the degree of nonconformity.

**11-4.4.4     Illegal Structures**

No structure that fails to conform with the requirements of this chapter shall be erected.

**11-4.5       Non-Conforming Lots****11-4.5.1     Use**

Any lot of record at the time of the adoption of this Ordinance which is less in area or width than the minimum required by this Ordinance may be used when the requirements regarding setbacks, side, and rear yards are met.

**11-4.5.2     Changes in District Boundaries**

Whenever the boundaries of a district are changed by amendment of this Ordinance, any uses of land, legal structures or buildings which become nonconforming as a result of such change shall become subject to the most current provisions of this Ordinance. Such affected use, lot or structure shall be accorded nonconforming use, lot and/or structure status as may be appropriate under the terms of this Ordinance.

**11-4.5.3     Division, Boundary Line Adjustment**

No lot or parcel or portion thereof shall be used or sold in a manner reducing compliance with lot width or other requirements established by this chapter, nor shall any division be made which creates a lot with width or area below the requirements stated in this chapter.

Notwithstanding the provisions of the paragraph above, boundary line adjustments may be permitted between nonconforming lots, or between a conforming and a nonconforming lot, provided that the Zoning Administrator determines that the degree of nonconformity for any lot resulting from such boundary line adjustment is not increased due to such adjustment.

**11-4.5.4     Condemnation**

Any lawfully created lot which, by reason of condemnation for alignment, realignment of a federal or state road, has been reduced in size to any area less than that required by this

Ordinance shall be considered a lawful nonconforming lot of record subject to the provisions set forth in this section, so long as compensation was not received by the landowner at the time of condemnation.

**11-4.5.5 Violations Are Not Nonconformities**

Uses or structures established in violation of zoning regulations are lawful non-conformities. The burden of proof shall be upon the owner of the property to establish the lawful nonconforming status of a claimed non-conforming use.

**11-4.5.6 Accessory Uses/Buildings, Signs**

A lawful nonconforming use of a structure, a lawful nonconforming use of land or a lawful nonconforming use of a structure and land in combination shall not be continued, extended or enlarged by use or establishment of either an accessory use or building or by attachment on a building or premises of additional signs intended to be seen from off the premises.

**11-5 Enforcement and Penalties *[formerly Article 31]***

**11-5.1 Conformance to Provision.** All departments, officials, and public employees of the Town of Warrenton which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance. They shall issue permits for uses, buildings, or purposes only when they are in harmony with the provisions of this Ordinance. Any such permit, if issued in conflict with the provisions of this Ordinance, shall be null and void.

**11-5.2. Zoning Administrator**

Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written violation complaint.. The Zoning Administrator shall properly record such complaint, investigate it and take appropriate action thereon if warranted.

Upon his becoming aware of any violation of any provision of this chapter, the Zoning Administrator shall serve notice of such violation on the person committing or permitting such violation. If such violation has not ceased within thirty (30) days or such other reasonable time set by the Zoning Administrator and specified in the notice, he shall institute such legal action as may be necessary to remedy and terminate the violation.

The Zoning Administrator shall order the discontinuance of illegal use of land, buildings or structures, removal of illegal building or structures or of illegal additions, alterations or structural changes and discontinuance of any illegal work being done, or shall take any other action authorized by this chapter to ensure

compliance with, or to prevent violation of, its provisions.

Notice of a zoning violation or a written order of the Zoning Administrator shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty (30) days, and that the decision shall be final and unappealable if not appealed within thirty (30) days.

#### **11-5.3 Violation of Provisions.**

Any person, firm, or corporation, whether as principal, owner, lessee, agent, employee or otherwise, who violates, causes, or permits the violation of any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, may be fined up to one thousand (\$1,000) dollars. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this Ordinance is committed, continued, or permitted by such person, firm, or corporation, and shall be punishable as herein provided.

#### **11-5.4 Recourse for Unlawful Use.**

The Zoning Administrator of the Town of Warrenton may institute any appropriate action of proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, or conversion of any building or structure, or the unlawful use of land; to restrain, correct, or abate such violation; to prevent the occupancy of said building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises. The remedies provided for in this section are cumulative and not exclusive and shall be in addition to any other remedies provided by law.

#### **~~11-5.5 Certificate of Violation.~~**

~~The Zoning Administrator, upon determining that the use of a property or structure or the erection of a building or structure is in violation of this ordinance, may issue a Notice of Violation identifying the violations and the ordinance sections pertaining thereto and post such Notice on the structure or property in violation. The property owner shall be responsible immediately for contacting the Zoning Administrator within ten (10) days of the dated Notice to determine the nature of the violation and the remedies or actions needed to eliminate the offense. The property shall also be subject to a fee for service of the Notice of Violation which shall be established from time to time by the Warrenton Town Council. Failure to respond to the Notice of Violation shall be considered a violation of the ordinance and subject to the penalties and actions available under this Article.~~